

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: V.G. Farms, Inc. Mahaska County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2013-AFO-01
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TO: Joel Vangilst, President
V.G. Farms, Inc.
2750 Rowland Ave.
Oskaloosa, IA 52577

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and V.G. Farms, Inc. (V.G. Farms) for the purpose of resolving the failure to timely submit Manure Management Plan (MMP) updates and compliance fees for two of V.G. Farm's facilities. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

David Perry
Iowa Department of Natural Resources
401 SW 7th St, Suite I
Des Moines, Iowa 50309
Phone: 515/725-0200

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319
Phone: 515/281-0824

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. V.G. Farms owns and operates several animal feeding operations. Two of which are the subject of this order and are located in Mahaska County, Iowa. The first facility, known as V.G. Farms-Brad Bloomers, is located at Section 27 T75 R15 (Spring Creek township) and is locally known as 2555 270th Street Oskaloosa, Iowa (facility number 59753). The second, known as V.G. Farms-Van Ommen, is located at Section 33 T75 R14 and is locally known as 2725 Union Avenue Cedar, Iowa (facility number 59756). Both of these facilities are required to submit an updated MMP and compliance fee each year, for each facility.

V.G. Farms-Brad Bloomers

2. On February 12, 2010, a Notice of Violation (NOV) was sent to V.G. Farms for failure to submit the 2010 MMP update and compliance fee for V.G. Farms-Brad Bloomers which were due February 1, 2010. This letter informed V.G. Farms that the updated MMP and compliance fee must be submitted by February 28, 2010, to avoid a compliance action or a monetary penalty. On March 19, 2010, the updated MMP and compliance fee were received by the Department.

3. On February 15, 2011, a NOV was sent to V.G. Farms for failure to submit the updated MMP which was due to the Department February 1, 2011. This letter informed V.G. Farms that the updated MMP and compliance fee must be submitted by February 28, 2011, to avoid a compliance action or a monetary penalty. On March 1, 2011, the updated MMP and compliance fee were received by the Department.

4. On March 7, 2012, a Notice of Referral was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee which were due to the Department February 1, 2012. On March 7, 2012, the updated MMP and compliance fee were received by the Department.

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V.G. Farms-Van Ommen

5. On May 19, 2003, a NOV was sent to V.G. Farms for failure to submit a complete original MMP. This NOV stated the following: on April 9, 2003, the Department sent the facility a letter stating that the MMP submitted for the facility was administratively reviewed and considered incomplete, a checklist explaining which items were missing from the MMP was provided and 30 days was given to complete the MMP. This letter also stated that to date the Department had not yet received the information necessary to approve the original MMP. On August 12, 2003, the original MMP was approved by the Department.
6. On May 17, 2004, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and annual compliance fee for this facility which were due to the Department April 1, 2004. On May 20, 2004, the Department received a complete update and compliance fee.
7. On May 16, 2005, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2005. On June 6, 2005 a incomplete update was received by the Department. ON June 28, 2005, a request for more information was sent and on July 21, 2005, the updated MMP was approved by the Department.
8. On April 14, 2006, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2006. On April 25, 2006, the Department received a complete update and compliance fee.
9. On April 17, 2007, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2007. On May 22, 2007, the Department received a complete update and compliance fee.
10. On April 14, 2008, a NOV was sent to V.G. Farms for failure to submit its MMP annual update and compliance fee for this facility which were due to the Department April 1, 2008. On May 9, 2008, the Department received a complete update and compliance fee.
11. On April 15, 2009, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2009. On May 6, 2009 a notice of incomplete MMP was sent to V.G. Farms. In this letter the Department enclosed a checklist of information that needed to be submitted and asked that it be provided to the Department within 10 days. On July 6, 2009, a NOV was sent to V.G. Farms for submittal of an incomplete MMP. On October 7, 2009, the Department received a complete update and compliance fee.

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12. On April 18, 2011, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2011. On May 2, 2011, the Department received a complete update and compliance fee.
13. On April 19, 2012, a NOV was sent to V.G. Farms for failure to submit its annual MMP update and compliance fee for this facility which were due to the Department April 1, 2012.
14. On November 28, 2012, V.G. Farms submitted its annual MMP update and compliance fee to the Department. The verification of county receipt was dated April 11, 2012.

CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.
2. 567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The updated plan must reflect all amendments made during the period of time since the previous MMP submission. The compliance fee is fifteen cents per animal unit. V.G. Farms failed to timely submit complete MMP updates and compliance fees for two of its animal feeding operations on numerous occasions. The above-facts indicate violations of this provision.

V. ORDER

THEREFORE, the Department orders and V.G. Farms agrees to do the following:

1. In the future timely submit all annual MMP updates and annual compliance fees; and
2. Within 30 days of the date the Director signs this order pay a penalty in the amount of \$3,006.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The

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Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,006.00. The administrative penalty is determined as follows:

Economic Benefit – V.G. Farm's failure to timely submit the MMP updates and compliance fees for two of its facilities has allowed the company to save time and money. An economic benefit has been gained from the delay in the submittals. Therefore, \$356.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update is a crucial aspect of the Department's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. It is likely that environmental harm would occur if the manure is not applied properly. Therefore, \$1,150.00 is assessed for this factor.

Culpability – V.G. Farms has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that its conduct is subject to the Department's rules. V.G. Farms is aware of the regulations and has a history of noncompliance with the requirements. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of V.G. Farms. For that reason V.G. Farms waives the right to appeal this administrative consent order or any part thereof.

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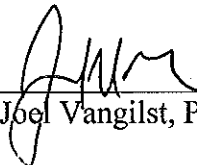
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 28th day of
January, 2013.



Joel Vangilst, President V.G. Farms, Inc.

Dated this 24 day of
December, 2012.

Facility #59756 and Facility #59753; Carrie Schoenebaum; Field Office 5; EPA; VIII.C.2